

BANKING DIVISION[187]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 535D.21, the Iowa Division of Banking (IDOB) hereby gives Notice of Intended Action to amend Chapter 19, “Mortgage Loan Originators,” Iowa Administrative Code.

The proposed amendments reflect partial compliance with Iowa Code section 17A.7(2), which states that, as of July 1, 2012, “over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency’s rules [and t]he goal of the review is the identification and elimination of all rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies.” The proposed amendments to Chapter 19 are intended to clarify the meaning of Chapter 19, to eliminate outdated requirements, and to reflect current administrative practices, specifically those regarding the use of the nationwide multistate licensing system.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before April 19, 2017. Comments should be directed to Zachary Hingst, Legal Counsel, Iowa Division of Banking, 200 E. Grand Avenue, Suite 300, Des Moines, Iowa 50309; by telephone at (515)281-4014; or by e-mail to zak.hingst@idob.state.ia.us.

No current fees are being changed and no new fees are being added; therefore, the IDOB has concluded that the proposed amendments will not have a fiscal impact.

These rules are subject to waiver or variance pursuant to 187—Chapter 12.

Because no existing authorized activities are being restricted, no new activities are being authorized, no existing fees are being increased, and no new fees are being added, the IDOB has concluded that the proposed amendments will have no impact on jobs in Iowa.

These amendments are intended to implement Iowa Code chapters 17A and 535D.

The following amendments are proposed.

ITEM 1. Amend rule 187—19.1(17A,83GA,SF355) as follows:

187—19.1(17A,83GA,SF355 535D) Definitions. For the purposes of this chapter, the definitions in ~~2009 Iowa Acts, Senate File 355,~~ Iowa Code section 535D.3 shall apply. In addition, unless the context otherwise requires, the following definitions shall apply to this chapter and to ~~2009 Iowa Acts, Senate File 355~~ Iowa Code chapter 535D:

“*Licensee*” means a person who has a license to operate as a mortgage loan originator in accordance with the provisions of ~~2009 Iowa Acts, Senate File 355, section 4~~ Iowa Code section 535D.4.

“*Nationwide ~~mortgage~~ multistate licensing system and registry*” or “*NMLS&R NMLS*” means a ~~mortgage~~ multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage providers, mortgage lenders, mortgage brokers, and mortgage servicers.

“*SAFE mortgage loan originator test*” means the licensing test approved by the ~~NMLS&R~~ NMLS in accordance with the provisions of ~~2009 Iowa Acts, Senate File 355, section 9~~ Iowa Code section 535D.8.

“*Servicer*” means a person that collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan.

“*Superintendent*” means the superintendent of banking appointed pursuant to Iowa Code section 524.201.

“*Takes a residential mortgage loan application,*” with respect to ~~2009 Iowa Acts, Senate File 355, section 3, subsection 8~~ Iowa Code section 535D.3(8), means:

1. Any communication, regardless of form, from a mortgage loan originator to a borrower soliciting a loan application or requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or
2. Any communication, regardless of form, from a borrower to a mortgage loan originator for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

ITEM 2. Amend rule 187—19.2(17A,83GA,SF355) as follows:

187—19.2(17A,83GA,SF355 535D) Mortgage loan originator requirements.

19.2(1) A natural person who applies for a license pursuant to ~~2009 Iowa Acts, Senate File 355, section 4,~~ Iowa Code section 535D.4 to act as a mortgage loan originator in this state shall apply with the superintendent through the NMLS&R NMLS. The superintendent may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the superintendent within 30 days after the superintendent requests the information.

19.2(2) Prior to applying for a mortgage loan originator license, the applicant must complete the prelicensing education requirements pursuant to ~~2009 Iowa Acts, Senate File 355, section 8~~ Iowa Code section 535D.7.

19.2(3) Prior to applying for a mortgage loan originator license, the applicant must pass the SAFE mortgage loan originator test, which is comprised of two components: a national component and a state component. Applicants must pass each component with a score of 75 percent or higher. ~~Mortgage loan originators who passed the Iowa loan originator test as part of the registration process under 2009 Iowa Acts, Senate File 355, section 5, are not required to take the Iowa state component of the SAFE mortgage loan originator test. The superintendent will develop a process by which to certify to NMLS&R that the applicant has completed the state component. Such applicants are still required to pass the national component of the SAFE mortgage loan originator test.~~

19.2(4) The fee for an initial mortgage loan originator application is \$50. This fee is nonrefundable. This fee is in addition to any fees established and charged by the NMLS&R NMLS, any approved education course provider, any approved education testing provider, any law enforcement agency for fingerprints and background checks, or by any credit reporting agency used by the NMLS&R NMLS.

19.2(5) An applicant must provide fingerprints, authorize a fingerprint background check through NMLS&R NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. This requirement applies to all individuals, regardless of whether the applicant was previously registered under Iowa Code chapter 535B or if the applicant has previously submitted fingerprint cards for licensure. ~~Until the NMLS&R completes the implementation of the electronic fingerprint capture program, the applicant must submit to a criminal background check by providing a fingerprint card and waiver in a manner as required by the superintendent.~~

19.2(6) Each applicant must provide authorization to obtain a credit report through NMLS&R NMLS.

19.2(7) to 19.2(9) No change.

19.2(10) An individual who has completed 20 hours of prelicensure education pursuant to 12 U.S.C. 5104(c) must retake 20 hours of prelicensure education in order to be eligible for mortgage loan originator licensure if the individual:

- a. Fails to acquire a valid state license or federal registration as a mortgage loan originator within three years from the date of federal compliance with 12 U.S.C. 5104(c); or
- b. Fails to acquire a valid state license or federal registration as a mortgage loan originator within three years from the last date of licensure or registration as a mortgage loan originator.

ITEM 3. Amend rule 187—19.3(17A,83GA,SF355) as follows:

187—19.3(17A,83GA,SF355 535D) Grounds for denial of license.

19.3(1) The superintendent shall deny an application for a mortgage loan originator license if the applicant does not meet the qualifications outlined in ~~2009 Iowa Acts, Senate File 355, section 7~~ Iowa Code section 535D.6. For the purpose of applying ~~2009 Iowa Acts, Senate File 355, section 7, subsection 2~~ Iowa Code section 535D.6(2), “dishonesty or breach of trust” includes, but is not limited to, forgery, embezzlement, obtaining money under false pretenses, theft, extortion, fraud, conspiracy to defraud, tax evasion, or another similar offense.

19.3(2) The superintendent may deny an application for a mortgage loan originator license for any of the following reasons:

a. No change.

b. The applicant has been barred, removed, or prohibited from serving in any capacity in a financial institution by any state or federal regulatory agency, including but not limited to the Office of Comptroller of the Currency, ~~the Office of Thrift Supervision~~, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, or the U.S. Department of Housing and Urban Development.

c. to f. No change.

g. The applicant has demonstrated a lack of moral character in a manner that the superintendent reasonably believes will impair the applicant’s ability to act as a mortgage loan originator in full compliance with the public interest and state policies described in Iowa Code ~~chapter~~ chapters 535B and 535D.

h. to j. No change.

ITEM 4. Amend rule 187—19.4(17A,83GA,SF355) as follows:

187—19.4(17A,83GA,SF355 535D) Renewal of mortgage loan originator license.

19.4(1) No change.

19.4(2) ~~Before~~ By December 1 of the year of expiration, a mortgage loan originator license shall be renewed through the ~~NMLS&R~~ NMLS, with all requested information provided as directed by the ~~NMLS&R~~ NMLS, and must be accompanied by a fee of \$50. This fee is nonrefundable. This fee is in addition to any fees established and charged by the ~~NMLS&R~~ NMLS, any approved education course provider, any approved education testing provider, any law enforcement agency for fingerprints and background checks, or by any credit reporting agency used by the ~~NMLS&R~~ NMLS. The superintendent may assess a late fee of \$5 per day not to exceed \$100 for a mortgage loan originator license renewal accepted for processing after December 1.

19.4(3) No change.

19.4(4) The superintendent shall grant an application to renew a mortgage loan originator license if the licensee meets the standards for renewal in ~~2009 Iowa Acts, Senate File 355, section 10,~~ Iowa Code section 535D.9 and:

a. to c. No change.

ITEM 5. Amend rule 187—19.5(17A,83GA,SF355), parenthetical implementation statute, as follows:

187—19.5(17A,83GA,SF355 535D) Reinstatement of license.

ITEM 6. Amend rule 187—19.6(17A,83GA,SF355), introductory paragraph, as follows:

187—19.6(17A,83GA,SF355 535D) Notice of significant events. A licensee shall notify the superintendent ~~either directly in writing or through the NMLS&R NMLS~~ within ~~five business~~ ten days of the occurrence of any of the following events.

ITEM 7. Amend rule 187—19.7(17A,83GA,SF355), parenthetical implementation statute, as follows:

187—19.7(17A,83GA,SF355 535D) Annual report.

ITEM 8. Amend rule 187—19.8(17A,83GA,SF355) as follows:

187—19.8(17A,83GA,SF355 535D) Administrative fees.

19.8(1) *Investigation or examination fees.* A licensee shall pay an investigation or examination fee as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division as described in ~~2009 Iowa Acts, Senate File 355, section 12, subsection 2~~ Iowa Code section 535D.11(2).

19.8(2) and **19.8(3)** No change.

19.8(4) *Required annual report.* A licensee who fails to file with the superintendent the annual report required under rule 187—19.7(17A,83GA,SF355 535D) by March 31 of each year shall be subject to a late penalty of \$10 for each day the annual report is delinquent, but in no event shall the aggregate of late penalties exceed \$300. The superintendent may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.

19.8(5) *NMLS&R NMLS system processing fees.* In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the ~~NMLS&R NMLS~~ attributed to the licensee's record in the ~~NMLS&R system NMLS~~, including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

ITEM 9. Amend rule 187—19.9(17A,83GA,SF355), parenthetical implementation statute, as follows:

187—19.9(17A,83GA,SF355 535D) Continuing education.

ITEM 10. Amend subrule 19.9(2) as follows:

19.9(2) Each continuing education course shall first be approved by the ~~NMLS&R NMLS~~ before the superintendent grants continuing education credit.

ITEM 11. Amend subrule 19.9(4) as follows:

19.9(4) The entity providing the continuing education course shall submit to the ~~NMLS&R NMLS~~ evidence of the licensee's satisfactory completion of approved continuing education.

ITEM 12. Amend subrule 19.9(6) as follows:

19.9(6) Each mortgage loan originator shall ultimately be responsible for maintaining verification records in the form of completion certificates or other documents providing evidence of satisfactory completion of approved continuing education courses. The mortgage loan originator shall retain documentation for a period of three years after the effective date of the mortgage loan originator license renewal. The superintendent may conduct random audits to verify the continuing education submitted to the ~~NMLS&R NMLS~~.

ITEM 13. Amend rule 187—19.10(17A,83GA,SF355) as follows:

187—19.10(17A,83GA,SF355 535D) Independent contractor—loan processor or underwriter.

19.10(1) For the purpose of ~~2009 Iowa Acts, Senate File 355, section 4~~ Iowa Code section 535D.4, “a loan processor or underwriter who is an independent contractor” means any person who processes or underwrites residential mortgage loans and is not a W-2 employee of a company licensed under Iowa Code chapter 535B, 536, or 536A.

19.10(2) An independent contractor must meet all the licensure requirements found in rule 187—19.2(17A,83GA,SF355 535D) with the exception of subrule 19.2(8).

19.10(3) No change.

ITEM 14. Amend rule 187—19.11(17A,83GA,SF355) as follows:

187—19.11(17A,83GA,SF355 535D) NMLS&R NMLS information challenge process. A mortgage loan originator may challenge information entered into the NMLS&R NMLS by the superintendent by filing a dispute with the superintendent outlining the grounds for the dispute. The grounds for the dispute shall be limited to a review of the factual accuracy of the information regarding the mortgage loan originator's own license record submitted to the NMLS&R NMLS by the superintendent. A mortgage loan originator may not file a dispute in order to protest a disciplinary action taken by the superintendent or to appeal the underlying reasons for the disciplinary action. The superintendent shall conduct a paper review of the dispute and determine whether the information submitted to the NMLS&R NMLS was factually correct. The superintendent shall notify the mortgage loan originator of the determination within 60 days of the receipt of the dispute. If the superintendent determines the information submitted to the NMLS&R NMLS is factually incorrect, the superintendent shall take prompt steps to correct the information submitted.

ITEM 15. Amend rule 187—19.12(17A,83GA,SF355) as follows:

187—19.12(17A,83GA,SF355 535D) Disciplinary action.

19.12(1) The superintendent has authority, pursuant to ~~2009 Iowa Acts, Senate File 355, and Iowa Code chapter 535D and 17A,~~ to impose discipline for violations of ~~2009 Iowa Acts, Senate File 355,~~ Iowa Code chapter 535D and the rules promulgated thereunder.

19.12(2) Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in ~~2009 Iowa Acts, Senate File 355, section 14,~~ Iowa Code section 535D.13 when the superintendent finds any of the following:

a. The licensee has violated a provision of ~~2009 Iowa Acts, Senate File 355, Iowa Code chapter 535D~~ or a rule adopted under ~~2009 Iowa Acts, Senate File 355,~~ thereunder or any other state or federal law applicable to the conduct of mortgage loan originators, including but not limited to Iowa Code chapters 535 and 535A.

b. No change.

c. The licensee fails at any time to meet the requirements of ~~2009 Iowa Acts, Senate File 355,~~ Iowa Code section 7 535D.6 or ~~40,~~ 535D.9 or withholds information or makes a material misstatement in an application for a license or the renewal of a license.

d. No change.

e. The licensee fails to fully cooperate with an examination or investigation, including failure to respond to a superintendent inquiry within 30 ~~calendar~~ days of the date of mailing a written communication directed to the licensee's last-known address on file with the superintendent.

f. to i. No change.

j. The licensee fails to notify the superintendent within ~~five~~ ten days of the occurrence of one of the significant events set forth in rule 187—19.6(17A,83GA,SF355 535D).

k. and l. No change.

19.12(3) No change.

ITEM 16. Amend the following implementation sentence in **187—Chapter 19:**

Rules 187—19.1(17A,83GA,SF355 535D) to 187—19.12(17A,83GA,SF355 535D) are intended to implement ~~2009 Iowa Acts, Senate File 355~~ Iowa Code chapters 17A and 535D.